State Human Rights Committee
2003 Annual Report
On the Status of the DMHMRSAS Human Rights System

Approved by the SHRC on July 17, 2004

Presented to the
State Mental Health, Mental Retardation and Substance Abuse Services Board

August 12 & 13, 2004
Catawba Hospital
Catawba, Virginia

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MESSAGE FROM THE SHRC CHAIR and THE DIRECTOR OF HUMAN RIGHTS

The State Human Rights Committee's (SHRC) Report for the 2003 year presents our activities and accomplishments and those of the Office of Human Rights (OHR) during the past year to protect the legal and human rights of consumers receiving services in community programs and state facilities. This report provides important information about our human rights in programs and facilities that are operated or funded by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).

The success of the Human Rights Program and the Office of Human Rights rests with dedicated staff and advocates, committed volunteers who serve on our Local Human Rights Committees (LHRC), the support of the State Mental Health, Mental Retardation and Substance Abuse Services Board, and employees in community and facility programs who ensure our consumers are treated with dignity and respect and receive the appropriate level of services. It is our hope that this report enlightens you about our efforts on important system wide issues and our progress toward the protection of the human rights of individuals receiving services in public and private settings.

The State Human Rights Committee continued its practice to conduct meetings at state facilities and in community programs across the Commonwealth of Virginia. We met at one (1) state facility, three (3) private psychiatric hospitals, and two (2) Community Services Boards/Behavioral Health Authorities this year. In many instances, in addition to our meetings we met with consumers who shared their opinions about the quality of care, visited local programs and listened to staff who shared their thoughts about a variety of issues and ways we can improve the effectiveness of our system. We also welcomed four new members appointed by the State Board.

The Virginia Center for Behavioral Rehabilitation (VCBR) opened this year on the DMHMRSAS campus in Dinwiddie County. This temporary home serves a very special population of individuals with criminal histories of sexual violence. The SHRC serves as the Local Human Rights Committee for this new facility and oversees the implementation of its human rights program. We approved their policies and procedures, visited the new facility, and assigned an advocate to the Center.

We are very pleased to share with you some of our accomplishments and activities. The SHRC received the final report from the Timeout Workgroup, convened by the SHRC to develop guidelines on the use of timeout. The Workgroup developed a timeout definition and recommended that timeout be addressed during the next Human Rights Regulations review. The SHRC also appointed the LHRC Study Group and, in June, received their recommendations on how to improve the effectiveness and efficiency of LHRCs. The SHRC issued a response to their report on September 6, 2003.

The SHRC continued its efforts to stay abreast of human rights and legal issues affecting our service delivery system. We received presentations from the Director of Community Integration for People with Disabilities on the Olmstead Initiative (Executive Order 61), to improve services as a result of the U.S. Supreme Court Decision in Olmstead vs. L.C. and the Director of the Virginia Office for Protection and Advocacy (VOPA), Ms. Colleen Miller, on interdepartmental issues.

We sponsored our first LHRC/SHRC Seminar since 2001, with over 400 attendees. The Seminar focused on a greater understanding of the roles and responsibilities of LHRCs. This fulfilled our

commitment last year to examine the structure and operation of the human rights system to ensure LHRCs function in the most effective and efficient manner.

The Committee also addressed some administrative issues. Revisions were approved to our bylaws, we receive reports that track variances, and the Committee provides opportunities for the human rights advocates and other individuals to present issues that have an effect on administrative and service delivery in our system.

We wish to extend our sincere gratitude to the human rights staff and our dedicated volunteers who serve on local human rights committees and to the members of the State Human Rights Committee for their tremendous support of the human rights program. We appreciate your commitment to protecting the human rights of our consumers in facility and community programs. We are proud of the past year's accomplishments and express our sincere appreciation to our consumers, service providers and advocates. We look forward to the future with confidence that with dedicated staff, loyal volunteers and the support of the Department of Mental Health, Mental Retardation and Substance Abuse Services, we can succeed in making this program the best possible.

Joyce E. Bozeman, Ph.D., Chair
State Human Rights Committee

Margaret Walsh, Director
Office of Human Rights

OVERVIEW

The Department's Office of Human Rights, established in 1978, has as its basis the ***Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.*** The Regulations outline the Department's responsibility for assuring the protection of the rights of consumers in facilities and programs operated funded and licensed by DMHMRSAS.

Title 37.1-84.1, Code of Virginia (1950), as amended, and the Office of Human Rights assure that each consumer has the right to:

- Retain his legal rights as provided by state and federal law;
- Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;
- Be treated with dignity as a human being and be free from abuse and neglect;
- Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative.
- Be afforded the opportunity to have access to consultation with a private physician at his own expense;
- Be treated under the least restrictive conditions consistent with his condition and not be subjected to unnecessary physical restraint or isolation;
- Be allowed to send and receive sealed letter mail;
- Have access to his medical and mental records and be assured of their confidentiality;
- Have the right to an impartial review of violations of the rights assured under section 37.1-84.1 and the right to access legal counsel; and
- Be afforded the appropriate opportunities… to participate in the development and implementation of his individualized service plan.

The State Human Rights Committee's function is to ensure the protection of the legal and human rights of consumers who receive services in programs or facilities operated, funded or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, and to ensure that services are provided in a manner compatible with human dignity and under the least restrictive conditions consistent with the consumer's needs and available services. The SHRC has the responsibility of monitoring and evaluating the implementation and enforcement of the ***Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*** promulgated pursuant to §37.1-84.1 of the Code of Virginia, as amended.

The State Human Rights Committee (SHRC):

- The SHRC consists of nine members appointed by the State Mental Health, Mental Retardation and Substance Abuse Services Board (hereinafter the Board).

    a. Members shall be broadly representative of professional and consumer interests and of geographic areas in the Commonwealth. At least two members shall be individuals who are receiving services or have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services. At least one-third shall be consumers or family members of similar individuals.

b. No member can be an employee or Board member of the Department or a Community Services Board.

c. All appointments after November 21, 2001 shall be for a term of three years.

d. If there is a vacancy, interim appointments may be made for the remainder of the unexpired term.

e. A person may be appointed for no more than two consecutive terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.

- Elect a chair from its own members who shall:

  a. Coordinate the activities of the SHRC;

  b. Preside at regular meetings, hearings and appeals; and

  c. Have direct access to the Commissioner and the Board in carrying out these duties.

- Upon request of the Commissioner, Human Rights Advocate, provider, Director, an individual or individuals receiving services, or on its own initiative, the SHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of one or more individuals receiving services from any provider. In conducting this review, the SHRC may consult with any Human Rights Advocate, employee of the Director, or anyone else. After this review, the SHRC shall make recommendations to the Director or Commissioner concerning changes in these policies, procedures, and practices.
- Determine the appropriate number and geographical boundaries of LHRCs and consolidate LHRCs serving only one provider into regional LHRCs whenever consolidation would assure greater protection of rights under the regulations.
- Appoint members of LHRCs with the advice of and consultation with the Commissioner and the State Human Rights Director.
- Advise and consult with the Commissioner in the employment of the State Human Rights Director and Human Rights Advocates.
- Conduct at least eight regular meetings per year.
- Review decisions of LHRCs and, if appropriate, hold hearings and make recommendations to the Commissioner, the Board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in the regulations.
- Provide oversight and assistance to LHRCs in the performance of their duties hereunder.
- Notify the Commissioner and the State Human Rights Director whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, Human Rights Advocates, or LHRCs and assure the availability of the opinion or report to providers, Human Rights Advocates, and LHRCs as appropriate. No document made available shall identify the name of individuals or employees in a particular case.
- Grant or deny variances according to the procedures specified in Part V (12 VAC 35-115-220) of the regulations and review active variances at least once every year.
- Make recommendations to the Board concerning proposed revisions to the regulations.

- Make recommendations to the Commissioner concerning revisions to any existing or proposed laws, regulations, policies, procedures, and practices to ensure the protection of individuals' rights.
- Review the scope and content of training programs designed by the department to promote responsible performance of the duties assigned under the regulations by providers, employees, Human Rights Advocates, and LHRC members, and, where appropriate, make recommendations to the Commissioner.
- Evaluate the implementation of the regulations and make any necessary and appropriate recommendations to the Board, the Commissioner, and the State Human Rights Director concerning interpretation and enforcement of the regulations.
- Submit a report on its activities to the Board each year.
- Adopt written bylaws that address procedures for conducting business; making membership recommendations to the Board; electing a chair, vice chair, secretary and other officers; appointing members of LHRCs; designating standing committees and their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.
- Review and approve the bylaws of LHRCs.
- Publish an annual report of the status of human rights in the mental health, mental retardation, and substance abuse treatment and services in Virginia and make recommendations for improvement.
- Require members to recuse themselves from all cases where they have a financial, family or other conflict of interest.
- Perform any other duties required under the regulations.

MISSION STATEMENT

The Office of Human Rights assists the Department in fulfilling its legislative mandate under §37.1-84.1 of the Code of Virginia to assure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed or funded by the Department.

The mission of the Office of Human Rights is to monitor compliance with the human rights regulations by promoting the basic precepts of human dignity, advocating for the rights of persons with disabilities in our service delivery systems, and managing the DMHMRSAS Human Rights dispute resolution program.

STRUCTURE

The Office of Human Rights is located within the Department of Mental Health, Mental Retardation and Substance Abuse Services and is supervised by the State Human Rights Director. The State Human Rights Director oversees statewide human rights activities and provides guidance and direction to human rights staff.

The **State Human Rights Committee** consists of nine volunteers, who are broadly representative of various professional and consumer groups, and geographic areas of the State. Appointed by the State Board, the SHRC acts as an independent body to oversee the implementation of the human rights program. Its duties include to: receive, coordinate and make recommendations for revisions to regulations; review the scope and content of training programs; monitor and evaluate the implementation and enforcement of the regulations; hear and render decisions on appeals from complaints heard but not resolved at the LHRC level; review and approve requests for variances to the regulations, review and approve LHRC bylaws, and appoint LHRC members.

The **Local Human Rights Committees are** committees of community volunteers who are broadly representative of various professional and consumer interests. LHRCs play a vital role in the Department's human rights program, serving as an external component of the human rights system. LHRCs review consumer complaints not resolved at the program level; review and make recommendations concerning variances to the regulations; review program policies, procedures and practices and make recommendations for change; conduct investigations; and review restrictive programming.

Advocates represent consumers whose rights are alleged to have been violated and perform other duties for the purpose of preventing rights violations. Each state facility has at least one advocate assigned, with regional advocates located throughout the State who provide a similar function for consumers in community programs. The Commissioner in consultation with the State Human Rights Director appoints advocates. Their duties include investigating complaints, examining conditions that impact consumer rights and monitoring compliance with the human rights regulations.

STATE HUMAN RIGHTS COMMITTEE MEMBERS

Joyce Bozeman
Chair

Joyce E. Bozeman, Ph.D. Dr. Bozeman was appointed on July 1, 2001. She has administrative and teaching experience in Higher Education, State Government, and Non-Profit Organizations. Prior to her current position as Assistant Vice President for Finance at Norfolk State University, she was Senior Policy Advisor to the President of Virginia State University. Dr. Bozeman worked for DMHMRSAS as Executive Assistant to the DMHMRSAS Commissioner from 1987 to 1991. Dr. Bozeman resides in Chesapeake.

Dr. Michael Marsh
Vice Chair

R. Michael Marsh, MSW, MPA, Ph.D. Social Worker, retired. Dr. Marsh was appointed on July 1, 2001. He has served on the Blue Ridge CSB (now known as the Blue Ridge Behavioral Healthcare) LHRC, and provided outstanding leadership and direction to the LHRC as Chair. Dr. Marsh retired as Facility Director of Catawba Hospital for the DMHMRSAS in 1995 having served in that capacity for 17 years. Prior to employment with DMHMRSAS he was a Medical Service Corps officer serving in a variety of positions in the Army that included working as a clinical social work officer and as a general staff officer in the Headquarters Department of the Army and in the Office of the Secretary of Defense. Dr. Marsh resides in Salem.

James Briggs

James Briggs is the former Manager of the Client Rights Program for the Virginia Department of Corrections (DOC). He was appointed on July 1, 1998. Mr. Briggs is a former member and Chair of Central State Hospital's Local Human Rights Committee. He has been a counselor and has 20 years experience working for the rights of individuals in DOC facilities. Mr. Briggs resides in Chester.

Dr. Angela Brosnan

Dr. Angela S. Brosnan, Psychiatrist. Dr. Brosnan was appointed on March 15, 2002. Dr. Brosnan was staff Psychiatrist, and Medical Director of the substance abuse program at the Mental Health Clinic of McGuire Veterans Administration Hospital in Richmond. She also served as Consultant on Psychiatry for Child Neurology at the Bureau of Crippled Children in Richmond, Chairman of the Physician's Consulting Group at St. Mary's Hospital in Richmond, and President of the Richmond Psychiatric Society. Dr. Brosnan is in private practice for both inpatient and outpatient psychiatry and is a member of the Medical Malpractice Advisory Panel to the Supreme Court of Virginia. Dr. Brosnan resides in Richmond.

Ms. Carmen Anne Thompson

Mrs. Carmen Anne Thompson was appointed on June 28, 2002. Ms. Thompson served two consecutive terms on the Catawba Hospital Local Human Rights Committee (LHRC), during which time she consistently demonstrated her personal commitment to the protection of human rights. She was an outstanding member of the LHRC and served as Chair during her second term. She is a mental health consumer and has family receiving substance abuse services. Ms. Thompson has a background in education and motivational speaking. Ms. Thompson resides in Moneta (beautiful Smith Mountain Lake), Virginia.

Ms. Davey Zellmer

Ms. Doris "Davey" Zellmer was appointed on June 28, 2002. At the time of her appointment she was serving as Chair of the Northern Virginia Training Center LHRC. Ms. Zellmer is a retired Registered Nurse and an ANA Certified Psychiatric Nurse. She served as Director of the Rehabilitation Services Unit, Director of the Community Care Unit, and Director of the Social Center for Psychiatric Rehabilitation at the Mount Vernon Center for Community Mental Health in southern Fairfax County. Ms. Zellmer is a consumer and has a son who is receiving services in the community. Ms. Zellmer resides in Fredericksburg.

Ms. Delores Archer

Ms. Delores Archer is Director of Intake and Referral for the Department of Psychiatry at VCU Medical Center. She has clinical training and expertise in the field of social work and has practiced in the private and public sectors. Ms. Archer has extensive knowledge and experience with the human rights system and the Department through her past membership on the SHRC. Ms. Archer was appointed to fill the vacancy of a term of July 1, 2001 to June 30, 2004.

Ms. Barbara Jenkins

Ms. Barbara Jenkins is an attorney and managing member of Jenkins & Rhea PLC. She has been a member of the Region Ten Local Human Rights Committee since May of 2000 has served as Chairperson of that committee. She has lectured on special education services for the Association for Retarded Citizens in Charlottesville and has represented a number of mentally retarded children. Ms. Jenkins was appointed to a term of July 1, 2003 to June 30, 2006.

Mr. Bobby Tuck

Mr. Bobby Tuck has a son who is receiving services from DMHMRSAS, which helps to fulfill the SHRC's mandate for consumer and family membership. He is a respected former member of the Southside Virginia Training Center Local Human Rights Committee and served as Chair of that committee. He has extensive knowledge of the human services delivery system and has been an active participant in a number of organizations committed to the protection of our consumers. Mr. Tuck was appointed to a term of July 1, 2003 to June 30, 2006.

OFFICER APPOINTMENTS/MEMBERSHIP CHANGES

Effective July 1, 2003

Joyce Bozeman, Chair
Dr. Michael Marsh, Vice Chair

Terms Expired in 2003:

Peter McIntosh
Carol Gittman
Linda Martin (resigned)

New Appointments in 2003

The State Board appointed Delores Archer to the SHRC on October 23, 2003. Barbara Jenkins, Susan Payne and Bobby Tuck were appointed by the Board effective July 1, 2003. Susan Payne resigned before attending a meeting.

STATE HUMAN RIGHTS COMMITTEE ACTIVITIES

- **LHRC Bylaws**

LHRC Bylaws and Bylaw revisions were approved for the following LHRCs.

Harrisonburg Rockingham LHRC
University of Virginia Psychiatric Services LHRC
Arlington LHRC
NOVA LHRC
Hanover CSB LHRC
St. Joseph's Villa LHRC
Piedmont Geriatric Hospital LHRC
Woodside Hospital LHRC
Poplar Springs Hospital LHRC
Loudoun County LHRC

- **Variances**

Variances were approved for the following providers.

Pines Residential Treatment Center
Pines Kenbridge
Highlands Community Services
Central State Hospital
Barry Robinson Center
Bethany Hall
New Life Recovery
District 19
Keystone
Jackson Field
Poplar Springs Hospital
Central State Hospital
Eastern State Hospital
Virginia Beach Psychiatric Hospital
Specialized Youth Services

Model Variances were approved for the following providers:

Southeastern Virginia Training Center
Southside Virginia Training Center
Western State Hospital
Eastern State Hospital
Hiram Davis Medical Center
Central Virginia Training Center
Poplar Springs Hospital
Central State Hospital
Catawba Hospital

Commonwealth Center for Children and Adolescents
Southwestern Virginia Training Center
Southwestern Virginia Mental Health Institute
Northern Virginia Mental Health Institute
District 19 CSB
Heritage House

- **Restrictive Plans**

Restrictive Behavioral Plans were approved for the following:

Eastern State Hospital
Prince William CSB

- **LHRC Appointments**

The SHRC appointed 194 individuals to serve on local human rights committees.

- **Meetings**

In 2003 the State Human Rights Committee held the following meetings:

January 24	Central Office Richmond, Virginia
March 7	Poplar Springs Hospital Petersburg, Virginia
April 25	Prince William Hospital Manassas, Virginia
June 6	Blue Ridge Behavioral HealthCare Roanoke, Virginia
July 18	Danville-Pittsylvania CSB Danville, Virginia
September 12	University of Virginia Hospital Charlottesville, Virginia
October 4	Eastern State Hospital Williamsburg, Virginia
December 5	Central Office Richmond, Virginia

Meeting at various facilities and programs throughout the state provides the Committee with first hand knowledge and familiarity with the kinds of services available to consumers and the settings within

which services are provided. Meetings are frequently held at other locations to accommodate hearings or when the agenda dictates the need to schedule meetings in the Central Office. Private psychiatric hospitals are new to the human rights system so the committee made an effort to meet in those facilities this past year.

- **Case Reviews**

Making decisions regarding consumer appeals is among the most challenging and important tasks for the SHRC. A total of 3,418 human rights and abuse/neglect complaints were processed through the human rights resolution process in 2003. All but ten (10) of these cases were resolved at the Directors level or below. Those ten (10) cases were appealed to a local human rights committee and six (6) of those cases were brought before the State Human Rights Committee on appeal. Each case provided the consumer with an additional opportunity to be heard regarding their human rights complaint. These appeals are the culmination of the human rights process and the decisions rendered by the SHRC provide guidance to LHRCs, facilities and programs across the state. Issues addressed in decisions rendered by the SHRC this past year included:

* right to protection from harm, abuse and exploitation
* right to confidentiality
* right to treatment with dignity
* right to informed consent
* right to participation in decision-making

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- **Outcomes and Activities**

A key function of the SHRC is to monitor the human rights system by identifying, and making recommendations, regarding human rights issues that have system wide impact. This function corresponds with the following goal from the SHRC 2002 Annual Report:

- **The SHRC will increase its attention to monitoring the human rights system.**

In 2003, the SHRC identified several system wide issues through its monitoring activities. One issue that the SHRC reviewed was the number of individuals in state operated facilities that have been determined to be ready for discharge. The SHRC asked the Commissioner to provide information about the Departments' efforts to discharge these individuals to appropriate community care. The Department provides ongoing information about the status of the individuals who are discharge ready and efforts to improve and revise the discharge protocols that provide the process by which the Department and CSBs approach discharge activities.

The SHRC learned that for some individuals, their discharge is delayed due to the absence of a substitute decision-maker. To further understand this issue the SHRC reviewed the various types of substitute decision-makers available through statute and regulation in Virginia. The SHRC sees the lack of available substitute decision-makers as a critical system-wide issue. Both of these issues relate to the following goal from last year's report that is highlighted below. The SHRC will continue to monitor the Department and systems progress with these issues as evidenced by **Goal # 3 (page 22).**

- **The SHRC recommends that DMHMRSAS continue to promote the human rights concepts of treatment in the most integrated settings, and consumer and family choice that are central to the Olmstead Decision.**

Another system wide issue that the committee addressed was related to the following goal from the 2002 report:

- **The SHRC will pursue ways of increasing the effectiveness and efficiency of the LHRC system.**

This goal stemmed from problems that the SHRC heard about within the local human rights committee system from a variety of sources. The problems include relationships with CSBs, management of committee functions, geographic boundaries, roles of parties and understanding the regulations. To better understand the issues, the SHRC directed the Office of Human Rights to convene a task force composed of a wide range of constituents. The task force was charged with the responsibility of making recommendations to the SHRC regarding improving the effectiveness and efficiency of the Local Human Rights Committees. The LHRC Study Group completed its work and presented its report with recommendations to the SHRC on June 6, 2003. The SHRC considered the report and issued its response on September 26, 2003. **The SHRC Response to the LHRC Study Group can be found in Appendix III.**

The SHRC takes its duty to provide oversight to local human rights committees very seriously. The following issues were considered by the SHRC regarding LHRCs:

- Affiliation Agreements
- Appropriate number and geographical location of LHRCs pursuant to the new human rights regulations
- Training
- LHRC/Provider relationship
- Conflict of interest
- Recruitment of members
- Disbanding of an LHRC
- Establishment of new LHRC
- Temporary affiliations

In 2003, the SHRC took action toward meeting the following goal from the 2002 Annual Report by approving a Model Variance for all providers. The Model Variance conforms two sections of the regulations to the Health Insurance Portability and Accountability Act (HIPAA). **The Model Variance can be found in Appendix III.**

- **The SHRC recommends that DMHMRSAS explore ways of conforming the human rights regulations to the provision of HIPAA without compromising human rights.**

The SHRC understands that DMHMRSAS has implemented a new program to reduce the use of seclusion and restraint in state operated facilities and community programs by the use of Therapeutic Options of Virginia (TOVA). This new behavioral intervention program promotes the concept of treatment without coercion as recommended in the goal below. The SHRC commends the Department

for its progress in this area and will continue to monitor the full implementation of coercion free environments throughout the system. **See Goal # 4 on page 23.**

- **The SHRC recommends that DMHMRSAS continue to promote the concept of, and provide training in, treatment without coercion in state operated facilities and community based programs and hospitals.**

In regard to the following goal from last years report, the SHRC understands that DMHRSAS submitted a request for 2 additional positions for the Office of Human Rights in its FY 2005 Budget and 1 additional position for FY 2006. Neither of these requests was included in the final budget submission. As such, the SHRC will increase its attention to this issue. **See Goal # 5 on page 23.**

- **The SHRC recommends that DMHMRSAS increase the number of Human Rights Advocates in accordance with the recommendations in House Document No. 21; "Evaluating the Human Rights Advocates in State Facilities and Community Programs."**

DMHMRSAS opened the Virginia Center for Behavioral Rehabilitation (VCBR) on the campus of Southside Virginia Training Center in the fall of 2003. The VCBR is the state facility that serves individuals that are civilly committed to the Department as sexually violent predators. To provide for the safety and well being of the residents, staff and community, the Commissioner issued exemptions to certain sections of the human rights regulations on October 31, 2003. The exemptions include a revised complaint resolution process and revised role of the SHRC. The revised process provides for the SHRC to have a more active role in the human rights oversight of this new facility. The SHRC assumes all roles and functions of a local human rights committee including the review and approval of policies, procedures, and rules of conduct. The SHRC also has a revised role in the complaint resolution process. The SHRC has been briefed on the VCBR treatment program and security measures. Members of the committee toured the facility as it was being renovated. As more residents are admitted to the VCBR the role of the SHRC will increase. **See Goal # 6 on page 23.**

The SHRC continues with the practice of alternating between administrative meetings and advocate forums from 8:00 a.m. to 10:00 a.m. prior to the start of the formal SHRC meetings. Administrative meetings are used to discuss ways of improving the conduction of business during the formal portion of the meetings and to discuss points of interest and concerns regarding the human rights program. Advocate forums give the advocates and SHRC members the opportunity to discuss systemic issues. The increased understanding of systemic issues and time for administrative activities has enabled the SHRC to better serve and protect consumers.

OFFICE OF HUMAN RIGHTS PROGRAM HIGHLIGHTS

STAFFING

The Office of Human Rights experienced several staff changes this year. Chris Ruble, CCCA/CORE Advocate, left service in November, and Mary Towle, Regional Advocate, retired after 13 years in December 2003. Both of these positions were filled after the first of the year. Anne Stiles is now providing services to both Piedmont Geriatric Hospital (PGH) and the Virginia Center for Behavioral Rehabilitation (VCBR). The Office of Human Rights Directory/Roster and OHR Regions can be found in **Appendix I**.

The Office of Human Rights continues to operate with reduced staff resources. Over the past three years the OHR has lost 2 advocate positions, 2 secretary positions and 1 management position. These losses coincide with an increase of individual's served in the community, an increase in the number of private providers, and an increase in the number of local human rights committees. The current staffing pattern severely reduces the availability of the OHR to provide quality advocacy services and the reduction all but eliminates the OHR availability to provide training to consumers, providers and professionals that may result in a lack of understanding about the regulations which could lead to consumers being at risk. The Department's overall system of consumer protection, including the Office of Licensing, is at risk due to the lack of staff resources.

In collaboration with the Department of Social Service (DSS), the OHR established two new "units" in order to access Federal Title 4E funds. These "CORE" Units, consist of staff that work exclusively with children's residential programs. These programs are eligible for Title 4E (Child Welfare) funds, which means our actions toward monitoring compliance can generate revenue. Other OHR staff who provide services to children's residential programs, and are not part of the CORE Units, submit a time sheet for submission to DSS for reimbursement. The OHR received $243,890.41 in Title 4E funds in 2003.

The OHR continues to promote the cross training of all advocates. Advocates are able to provide services to both community and state facility programs which strengthens both the community and facility programs by providing continuity of care and an increased emphasis on discharge planning and service development.

Efforts to promote compliance with THE *RULES AND REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES* continued throughout the year. These efforts included the following activities:

Training: OHR staff have provided training to consumers, family members or providers at the following locations:

- Club Houses
- Psychiatric Hospitals
- Professional Organizations
- Parent Organizations
- Group homes
- Residential Treatment Centers
- Training Centers
- Psychosocial Rehabilitation Programs
- Community Organizations
- Substance Abuse Programs
- Conferences/Meetings
- Community Services Boards
- Preadmission Screening Evaluator Certification (video tape)

Resource Development: The following information is available on the Office of Human Rights web page. The address for the web site is www.dmhmrsas.state.va.us/enter/office/human rights.

- Frequently Asked Questions (FAQ)
- "Notice of Rights" in five different languages
- Human rights training information including video tapes, power point slide presentations and workbook
- Sample Test Questions
- Implementation Monitoring Schedule
- Seclusion and Restraint Crosswalk
- ECT Checklist
- Human Rights Compliance Review Form

General Information: Individuals can also access general information about the human rights program on the web site. This information includes:

- Notice of SHRC meetings
- Notice of Variance requests
- LHRC affiliations and meeting schedules
- Relevant legislative information
- OHR Directory
- SHRC Annual Reports

OFFICE OF LICENSING / OFFICE OF HUMAN RIGHTS

This past year saw a continuation of the cooperation and collaboration between the OHR and the Office of Licensing. These efforts were prompted by **§ 37.1-84.1 (A) 10, § 37.1-179 and § 37.1-185.1** of the **Code of Virginia**. These sections of the code require providers to be in compliance with the human rights regulations in order to become licensed by the Department and require each provider to undergo periodic human rights reviews. The code also establishes human rights enforcement and sanctions, which provides consequences for providers for failure to comply with human rights regulations. The OHR developed a Monitoring Tool to promote consistent documentation of monitoring activities. The instrument was used for six months as a pilot and was revised following a period of evaluation. The revised instrument went into effect on April 1, 2004.

The OHR and OL also developed a protocol to clarify the relationship between the OL and the OHR in the area of abuse and neglect investigations. The protocol establishes a model for investigations which is consistent and, most importantly, provides the maximum protection for consumers. The protocol has improved the quality of investigations for both offices.

TRAINING AND STAFF DEVELOPMENT

Quarterly Advocate meetings were held at Western State Hospital May 21, and December 3, and via polycom on March 18 and August 20. The training was geared toward enhancing staff ability to effectively advocate for their consumers, and monitor the implementation of the regulations. Topics covered during the last year included the following: Time Out, Peer to Peer Aggression, HIPAA, Virginia Freedom of Information Act (FOIA), Monitoring of licensed programs, Departmental Instruction 201, Virginia Center for Behavioral Intervention (VCBR) and Therapeutic Options of Virginia. These meetings also served to keep staff informed of relevant policy and legislative changes. Guest presenters including the Virginia Office of Protection and Advocacy (VOPA) and the Office of the Attorney General (OAG) and staff of the Office of Human Rights provided the training.

ABUSE RELATED INITIATIVES

Office of Human Rights staff have been involved in several initiatives relative to abuse and neglect. The OHR and SHRC were involved in providing comments regarding the revisions to Departmental Instruction 201 that governs the abuse/neglect process within state facilities. The new DI 201 went into effect on October 31, 2003.

OHR staff participated in the Department's efforts to develop a new system of aggressive behavior intervention. These efforts resulted in the use of a new program, Therapeutic Options of Virginia (TOVA) that will enhance the treatment and safety of consumers and staff.

OHR staff have also been involved in efforts to reduce the use of seclusion and restraint in state facilities. OHR staff will continue to work with facility staff toward this goal.

OLMSTEAD TASK FORCE

With the support of Governor Warner, the Olmstead Task Force was created by the General Assembly in the 2002 Appropriation Act. It is chaired by Health and Human Resources Secretary, Jane H. Woods, and coordinated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Task Force brings together individuals from all walks of life who are interested in assuring that Virginians with all types of physical, mental, or sensory disabilities have an opportunity to live in the community. Its 65 members include consumers, family members, advocates, providers, and 15 state agencies having responsibility for providing services to individuals with disabilities in the Commonwealth.

The Office of Human Rights participated in several Olmstead Task Force related activities. In addition to assisting with the early planning of the Task Force, the OHR publicized the meetings to consumers and family members, participated on an Issue Team, and drafted an Olmstead related grant application.

The Final Report of the Olmstead Task Force was adopted on August 28, 2003 and includes over 200 recommendations. One of the recommendations was the establishment of the Olmstead Oversight Advisory Council. The OHR provided names of consumers and family members for consideration for membership on the committee.

HEALTHCARE INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

The Privacy Rule or HIPAA became effective on April 14, 2003. The OHR, as member of the HIPAA Steering Committee, worked closely with Department and Office of Attorney General staff to develop policy and procedures to implement this law. The relationship between HIPAA and the human rights regulations is of critical importance. Due to the complexity of the interplay between HIPAA and state law, providers may have an increased administrative burden. To reduce this burden, and to promote alignment between HIPAA and the human rights regulations,

the SHRC approved a model variance that addresses several Confidentiality sections of the regulations. Fifteen providers were granted the model variance in 2003.

REINVESTMENT/RESTRUCTURING

The Office of Human Rights participates in the activities of both the Reinvestment and Restructuring Planning processes. The OHR also participates on some of the special population work groups including Forensics and Mental Retardation.

PROJECTED ACTIVITIES FOR 2004-05

The primary goal for the Office of Human Rights for the year 2004-05 is to provide quality advocacy services to consumers in programs operated, funded and licensed by the Department. This is always the central function of the OHR and all other goals and activities support this goal. Major projected activities for the Office of Human Rights for the years 2004-05 are as follows:

A. Provide training for consumers, local and state committee members, providers and professionals on the regulations.
B. Pursue the development of a consumer human rights mentoring program.
C. Become educated about and promote best practice models of Recovery and Self Empowerment
D. Participate in the Regional Restructuring planning process.
E. Begin the periodic review of the human rights regulations.
F. Finalize the revision to the human rights brochure.
G. Assist with the implementation of the recommendations in the Final Report of the Olmstead Task Force.
H. Become knowledgeable about the Therapeutic Options of Virginia.
I. Promote coercion free environments statewide.
J. Work with the VACSB and other stakeholders to identify options to improve the system and availability of alternative decision-makers.
K. Continue to clarify, support and reinforce the change in roles for advocates, LHRC and SHRC members.
L. Promote consistency and accurate documentation of monitoring activities.
M. Develop resources to assist consumers and providers as needed.

LOCAL HUMAN RIGHTS COMMITTEES

Local Human Rights Committees continue to monitor the activities of facilities and community programs in assuring protection of consumers' rights. The volunteers who serve on these committees lend their time and expertise to ensure compliance with the Rules and Regulations. Committee members are appointed by the State Human Rights Committee and are eligible to serve two three-year terms. A listing of all 65 LHRCs and their program affiliates can be found in **Appendix II**.

All committees meet at least quarterly, with many meeting on a monthly basis. Local Human Rights Committees activities include:

- reviewing complaints filed on behalf of consumers;
- developing Bylaws;
- reviewing Variance requests;
- conducting Fact-Finding Conferences;
- reviewing restrictive programs; and
- reviewing policies and procedures.

ADVOCATES ACTIVITIES

During the year, the human rights staff was involved in numerous activities to ensure and protect the rights of consumers. These activities included:

- Assisting consumers in presenting and resolving complaints;
- Educating consumers, families, staff and Local Human Rights Committees on the rights of consumers;
- Monitoring the implementation and compliance with the regulations;
- Assisting in developing, reviewing and amending human rights policies and procedures for the approximately 450 providers in the state;
- Providing training to staff, consumers, family members, LHRCs;
- Providing consultation to consumers, program staff, LHRCs, advocacy and community groups on the human rights program.
- In addition to the above, the regional advocates provide advocacy services to community services boards and licensed programs in their assigned service areas. They also provide supervision to the facility advocates in that area.

SHRC Goals and Recommendations for 2004-06

1) Periodic review of the human rights regulations is to begin in the fall of 2004. The SHRC recommends that this review include, but not be limited to, the following:

    - Conforming the regulations with HIPAA
    - Pursuing ways of increasing the effectiveness and efficiency of the LHRC system
    - 12VAC-35-115-50 (4)c and (5) regarding the type of professional that can approve the limit of phone or visitors in SA programs
    - 12VA 35-115-30 and 100 regarding Time Out
    - Reporting requirements

2) The SHRC will join the Department in promoting the concepts of Recovery and Self Empowerment.

    - The SHRC will become knowledgeable about the concepts of Recovery and Self Empowerment by December 3, 2004.
    - The SHRC will issue a statement supporting these concepts by February 1, 2005

3) The SHRC recommends that DMHMRSAS continue to promote the human rights concepts of treatment in the most integrated settings, and consumer and family choice that are central to the Olmstead Decision.

    - Monitor state facility discharge lists at every meeting.
    - Join and monitor the efforts of the Department and VACSB to increase the number of substitute decision makers beginning September 10, 2004.
    - Monitor the Department and systems efforts toward maintaining youth in the community following their transition to adult services beginning September 10, 2004 including the establishment of a subcommittee to review current information and statewide efforts in this area. The subcommittee will provide updates each meeting and submit a final report by December 3, 2004.
    - Recommend that the Department and CSBs take a more active role in the training of private community providers particularly MR waiver providers by September 10, 2004.

4) The SHRC recommends that DMHMRSAS continue to promote the concept of, and provide training in, treatment without coercion in state operated facilities and community based programs and hospitals.

- The SHRC will become knowledgeable about TOVA by December 3, 2004
- The SHRC recommends that all DMHMRSAS CO staff attend TOVA Training to assist with the overall Department culture change by December 3, 2004
- The SHRC recommends that the Department take steps to ensure TOVA training is available for all community providers by June 1, 2005.

5) The SHRC recommends that DMHMRSAS increase the number of Human Rights Advocates in accordance with the recommendations in House Document No. 21; "Evaluating the Human Rights Advocates in State Facilities and Community Programs"

    - Take a more active role in advocating for additional resources for the OHR, letter to Commissioner, State Board by September 10, 2004.

6) The SHRC will monitor the Virginia Center of Behavioral Rehabilitation's adherence to the human rights regulations through reports, policies and complaint resolution as needed at every meeting or as issues arise.

7) The SHRC will support Local Human Rights Committees.

    - Each SHRC member will attend at least one LHRC meeting per year. SHRC members will provide prior notice to the LHRC chair requesting time on the agenda in order to make brief comments.
    - The SHRC will convene a work group by December 3, 2004, with representatives of local committees, providers and the Office of Human Rights to develop resources to assist with recruitment of LHRC members on the local level.
    - The SHRC will explore options by December 3, 2004, to enhance communication with LHRCs via the use of such tools as electronic newsletters or web-based information.

8) The SHRC will promote and provide ongoing training opportunities for all stakeholders.

    - Review the Seminar Evaluations by October 22, 2004.
    - Prioritize training issues based on the evaluations
    - Develop strategies to address the identified training issue.

9) The SHRC will establish a subcommittee by January 30, 2005, to explore the feasibility of a recognition/award/ or other activity to encourage and recognize exemplary programs, acts or significant contributions to the human rights system.

10) The SHRC will explore options to promote successful succession planning for advocacy within the Department and community human rights system by July 1, 2005.

SUMMARY OF COMMUNITY PROGRAM ABUSE /NEGLECT and COMPLAINT ALLEGATIONS

The following graph reflects statistics on abuse/neglect allegations/substantiation and human rights complaints from community programs for the years 2001, 2002 and 2003. This information is reported to the Regional Advocates from the Community Service Boards (CSB) and private providers.

- There were 380 human rights complaints as reported to Regional Advocates in 2003. This is down from 785 in 2002. This decrease is attributed to several factors. First is the improvement in the management of the informal complaint process by community programs. Second is that the current regulations require each to designate a contact person for human rights issues which was not the case under the former regulations. Also, the providers have an overall better understanding of their duties under the current regulations and have been responding to issues within their programs before they become complaints. While actual complaints are down, consultations by Office of Human Rights staff are up. Thus, by giving pro-active consultation to providers, consumers, family members and others, actual formal complaints are satisfactorily resolved more effectively.

- There were 1626 allegations of abuse and/or neglect as reported to Regional Advocates in 2003, which is up from the 1094 allegations in 2002. This increase is due to several factors. First, the number of providers reporting in 2003 has increased by 30% over the number in 2002. Second, Residential Treatment Centers for children and adolescents are more consistently reporting peer to peer allegations. Also, the regulations are far more prescriptive than the former regulations and they better define the abuse and neglect reporting and investigation requirements.

- There were 252 substantiated cases of abuse and or neglect as reported to Regional Advocates in 2003, which is more than the 215 cases in 2002. This increase possibly reflects that programs are becoming more skilled in investigating and determining abuse/neglect.

2001/2002/2003
Community Programs

	Abuse Allegations	Abuse cases Substantiated	Percent Substantiated	Human Rights Complaints
2001	**899**	**162**	**18%**	**840**
2002	**1094**	**215**	**19%**	**785**
2003	**1626**	**252**	**15%**	**380**

SUMMARY OF STATE FACILITY

HUMAN RIGHTS COMPLAINTS and ABUSE/NEGELCT ALLEGATIONS

(Data source is CHRIS)

- There were 752 human rights complaints in state facilities in 2003. This is down 29% from the 1061 complaints in 2002. The decrease is directly attributed to the Informal Complaint process outlined in the human rights regulations.

- Seven hundred and thirty nine (739) of the facility complaints were resolved at the Directors level or below. Five (5) human rights complaints of consumers in a state facility were heard on appeal at the LHRC level and two (2) complaints were heard on appeal at the SHRC level.

- There were 660 allegations of abuse/neglect in the state facilities. Statistically similar to the 682 in 2002.

- Forty-four (44) facility employees were terminated for abuse or neglect in 2003.

- Fifteen (15) facility employees resigned as a result of receiving an allegation of abuse or neglect. Nineteen (19) employees received written counseling notices and thirty-five received suspensions for actions involving an allegation of abuse or neglect.

- Nineteen percent (20%) of facility abuse/neglect allegations were substantiated in 2003. That is up from 16% in 2002. This increase possibly reflects that the investigators are becoming more skilled in investigating and determining abuse/neglect.

- The regulations provide for an Informal Complaint [12 VAC 35-115-160] process that is conducted by the provider prior to the involvement of the human rights advocate. The Informal Process has been widely and variably utilized within state operated facilities. During 2003 there were 1147 Informal Complaints processed within state operated facilities. The Office of Human Rights monitored the outcome of these Informal Complaints and found that the complaints were being resolved to the satisfaction of the individual consumer.

State Facility
Abuse/Neglect Data

#Allegations/ #Substantiated

	2001		2002		2003	
Catawba	33/0	(0%)	16/0	(0%)	8/0	(0%)
Central State	223/29	(13%)	172/28	(16%)	148/27	(18%)
CVTC	68/14	(20%)	73/13	(17%)	63/18	(28%)
CCAA	25/1	(4%)	12/0	(0%)	11/0	(0%)
Eastern State	101/23	(22%)	71/12	(16%)	79/14	(17%)
Hiram Davis	12/0	(0%)	10/4	(40%)	9/1	(11%)
NVMHI	41/0	(0%)	65/4	(6%)	49/4	(8%)
NVTC	11/3	(27%)	16/7	(43%)	11/5	(45%)
Piedmont	18/4	(22%)	17/4	(23%)	6/3	(50%)
SEVTC	52/5	(9%)	47/13	(27%)	71/19	(26%)
SVMHI	12/0	(0%)	4/0	(0%)	21/1	(4%)
SVTC	34/9	(26%)	39/12	(30%)	60/23	(38%)
SWVMHI	30/0	(0%)	40/3	(7%)	34/3	(8%)
SWVTC	63/2	(3%)	71/6	(8%)	66/9	(13%)
Western State	62/5	(9%)	33/5	(15%)	24/6	(25%)
Totals	**785/95**	**(12%)**	**686/112**	**(16%)**	**660/133**	**(20%)**

State Facility
Human Rights Complaints

	2001	2002	2003
Catawba	210	122	40
Central State	60	109	179
CVTC	176	191	42
CCAA	69	34	8
Eastern State	203	53	84
Hiram Davis	2	1	1
NVMHI	251	99	52
NVTC	17	4	0
Piedmont	106	69	77
SEVTC	9	5	2
SVMHI	32	24	31
SVTC	9	12	7
SWVMHI	183	80	41
SWVTC	22	19	17
Western State	391	239	171
Totals	**1740**	**1061**	**752**

State Facility
Informal Complaints

2003	
Catawba	29
Central State	29
CVTC	71
CCAA	21
Eastern State	502
Hiram Davis	5
NVMHI	40
NVTC	2
Piedmont	23
SEVTC	14
SVMHI	4
SVTC	4
SWVMHI	144
SWVTC	27
Western State	232
Totals	**1147**

APPENDIX

I

OFFICE OF HUMAN RIGHTS ROSTER
OFFICE OF HUMAN RIGHTS REGIONS

APPENDIX

II

LOCAL HUMAN RIGHTS COMMITTEES AND AFFILIATION

APPENDIX

III

SHRC RESPONSE TO THE LHRC STUDY GROUP
MODEL VARIANCE